

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

PATRICK HENRY MURPHY, JR.,
Plaintiff,

V.

BRYAN COLLIER, Executive Director
of the Texas Department of Criminal
Justice, LORIE DAVIS, Director of
the Texas Department of Criminal
Justice—Correctional Institutions
Division, and BILLY LEWIS,
Warden of the Huntsville Unit,
Defendants.

CIVIL ACTION NO. 4:19-cv-1106

**DEFENDANTS COLLIER, DAVIS AND LEWIS' UNOPPOSED
MOTION FOR ENTRY OF A PROTECTIVE ORDER**

Defendants Bryan Collier, Lorie Davis, and Billy Lewis (“Defendants”), through the Attorney General for the State of Texas, file this unopposed motion for entry of a protective order and respectfully show the following:

The parties have conferred and agreed upon the attached joint protective order. Defendants request that the Court approve the proposed joint protective order protecting certain aspects of TDCJ's execution protocols that are kept from public disclosure due to the high security implications. Given the ultrasensitive nature of some of the subject matter relating to executions, Defendants assert that dissemination of certain information in this case warrants stricter controls than may be typical in other civil suits.

STANDARD FOR PROTECTIVE ORDER

Federal Rule of Civil Procedure 26 allows a party to move for a protective order:

“the court may, for good cause shown, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(A) forbidding the disclosure or discovery;

(B) specifying terms, including time and place or the allocation of expenses, for the disclosure or discovery;

(C) prescribing a discovery method other than the one selected by the party seeking discovery;

(D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters . . .”

Fed. R. Civ. P. 26(c)(1)(A)–(D).

Here, Defendants intend to disclose the anticipated information relating to the hours before an execution, but seek to do so under the strict controls delineated in the joint protective order. In deciding whether to grant a motion for a protective order, the court has significant discretion. *Harris v. Amoco Prod. Co.*, 768 F.2d 669, 684 (5th Cir. 1985).

Disclosure of certain security protocols involved in an execution, particularly in the hours leading up to the execution, is highly sensitive and confidential, because such information could enable an inmate to use this information either to circumvent existing security protocols or to provide such information to other offenders. A protective order designating these documents and certain deposition testimony as “Confidential,” “For Counsel Only” or “Attorneys Eyes Only” will protect this information without impeding the Plaintiff’s ability to litigate his case.

Accordingly, Defendants ask this Court to issue the attached joint protective order.

Respectfully submitted,

KEN PAXTON

Attorney General of Texas

JEFFREY C. MATEER

First Assistant Attorney General

DARREN L. MCCARTY

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SHANNA E. MOLINARE

Chief, Law Enforcement Defense Division

/s/ Leah O'Leary

LEAH O'LEARY

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ATTORNEYS FOR DEFENDANTS

COLLIER, DAVIS, AND LEWIS

CERTIFICATE OF CONFERENCE

I, **LEAH O'LEARY**, Assistant Attorney General of Texas, certify that I conferred with counsel for Patrick Murphy multiple times. Plaintiff is unopposed to the filing of this motion and has agreed to the attached joint protective order.

/s/ Leah O'Leary

LEAH O'LEARY

Assistant Attorney General

NOTICE OF ELECTRONIC FILING

I, **LEAH O'LEARY**, Assistant Attorney General of Texas, certify that I have electronically submitted for filing a true and correct copy of the foregoing in accordance with the Electronic Case Files system of the Southern District of Texas, on June 17, 2019.

/s/ Leah O'Leary

LEAH O'LEARY

Assistant Attorney General

CERTIFICATE OF SERVICE

I, **LEAH O'LEARY**, Assistant Attorney General of Texas, certify on June 17, 2019, a true and correct copy of this motion and attachment were served on all attorneys of record through email and CM/ECF notification.

/s/ Leah O'Leary

LEAH O'LEARY

Assistant Attorney General